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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/699,503	10/31/2000	David C. Cushing	2566-106	1384
6449	7590	09/24/2007	EXAMINER	
ROTHWELL, FIGG, ERNST & MANBECK, P.C.			BORLINGHAUS, JASON M	
1425 K STREET, N.W.			ART UNIT	PAPER NUMBER
SUITE 800			3693	
WASHINGTON, DC 20005				
NOTIFICATION DATE		DELIVERY MODE		
09/24/2007		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

Office Action Summary	Application No.	Applicant(s)	
	09/699,503	CUSHING ET AL.	
Examiner	Art Unit		
Jason M. Borlinghaus	3693		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 30 July 2007.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 27 - 40 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 27 - 40 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) Paper No(s)/Mail Date. ____ .
3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____ . 5) Notice of Informal Patent Application
6) Other: ____ .

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Claims 27 - 40 in the reply filed on 7/30/07 is acknowledged.

Allowable Subject Matter

Claim 28 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Objections

Claims 29 – 33, 35 – 37 and 39 – 40 are objected to as said claims are dependent upon a claim, Claim 28, that would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 27, 34 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeny (US Patent 6,594,643) in view of Business Lawyer (*Large Order Execution in the Futures Market. The Business Lawyer*, 44 Bus. Law. 1335, August 1989, pp. 1 – 21).

Regarding Claims 27, 34 and 38, Freeny discloses a computer implemented method for executing trades of securities (abstract) comprising:

- receiving a trade request (trade request). (see col. 3, line 50 – col. 4, line 11);
- generating an executable trade order to implement said trade request according to a trading strategy (predetermined parameters or conditions necessary to authorize trade) selected from a plurality of trading strategies (to buy and/or sell). (see col. 3, line 15 – col. 4, line 11);
- executing said executable trade orders in a trade forum (trade exchange) determined by said selected trading strategy algorithm (see col. 3, line 50 – col. 4, line 28); and

- wherein said servers (individual selected market traders, such as Internet traders) are also connected to each other via said network (Internet). (see col. 4, lines 12 – 28);
- wherein said trade request includes a quantity of shares of the security within a time period. (see col. 3, lines 22 – 44);
- wherein said generating step includes the step of:
- continuously monitoring during said time period a plurality of market indicators (predetermined trading criterion, such as price) related to said security. (see col. 2, line 60 – col. 3, line 15; col. 4, lines 48 – 67);
- generating during said time period one or more executable trade orders selected from the group consisting of a market order. (see col. 3, line 50 – col. 4, line 2);
- wherein said orders are sent until an order is executed by said trade forum. (see col. 3, line 50 – col. 4, line 2);
- further comprising the step of providing a plurality of servers (plurality of data sources) connected to said communication network and to each other over said network (see col. 2, line 60 – col. 3, line 15), said servers being configured to compare received trade requests with orders received by other servers of said plurality of servers, and to carry out trades with said other servers in accordance with the order information entered into each server. (see col. 3, line 50 – col. 4, line 28).

Freeny does not explicitly disclose receipt of a block trade request, generation of a plurality of executable trade orders to implement the received block trade request, execution of such orders at different times; nor repeatedly generating during said time period one or more executable trade orders. (emphasis added).

However, Freeny does allow trade requests with user-defined quantities (see col. 3, lines 22 – 44) and a block trade request is merely a trade request with the user-defined quantity set to the large end of the spectrum. Anyway, changing a size without more is generally not deemed patentable. *In re Rose*, 200 F.2d 459, 463, 105 USPQ 237, 240 (CCPA 1955). Furthermore, repeatedly generating orders and executing a plurality of trade orders could be construed as mere repetition or duplication of the steps disclosed by Freeny and, generally, duplication of essential working parts without more is generally not deemed patentable. *St. Regis Paper Co. v. Bemis Co*, 193 USPQ 8 (CA 7); *In re Harza*, 124 USPQ 378 (CCPA 1960).

Regardless, Business Lawyer discloses that it is old and well known in the art of securities trading for a trader to receive a block trade request (orders that are so large that merely to bid or offer the entire order could have a disruptive effect on the market); generating a plurality of executable trade orders (group of transactions) to implement the received block trade request (large order); execution of such orders at different times (as series of bids and offers over some length of time); repeatedly generating during said time period one or more executable trade orders (as series of bids and offers over some length of time). (see p. 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Freeny to incorporate the techniques and methodologies for handling block trade requests, as disclosed by Business Lawyer, allowing for the execution of block trade requests without the adverse impact upon the marketplace.

Response to Arguments

Applicant's arguments with respect to pending claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M. Borlinghaus whose telephone number is (571) 272-6924. The examiner can normally be reached on 8:30am-5:00pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3693

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jason Borlinghaus (JMB)

September 16, 2007



JAGDISH N. PATEL
PRIMARY EXAMINER